



CONSULTATION ON ELECTORAL REFORM

RESPONDENT INFORMATION FORM

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- Individual
 Organisation

Full name or organisation's name

THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND

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- Yes
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THE ELECTORAL MANAGEMENT BOARD FOR SCOTLAND (EMB)

**A response to the Scottish Government's Consultation on Electoral
Reform**



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BACKGROUND

The Electoral Management Board for Scotland

The Electoral Management Board for Scotland (EMB) was created by the Local Electoral Administration (Scotland) Act 2011, which gave the Board “the general function of co-ordinating the administration of Local Government elections in Scotland.” The EMB’s prime focus is ensuring that the interests of the voter are kept at the centre of all electoral planning and administration. It operates through the close community of electoral professionals in Scotland and seeks to work by consensus rather than the issue of formal directions, wherever possible. Leading and supporting Returning Officer (RO) and Electoral Registration Officer (ERO) colleagues the EMB coordinates elections and referendums to produce results in which the voter can have full confidence.

While the EMB has a specific remit for local government elections, over recent years it has provided extensive guidance and recommendations to the electoral community in Scotland for UK Parliamentary Elections and other events. The Convener of the EMB was the Chief Counting Officer (CCO) for the Scottish Independence Referendum in 2014 delivering that event with the support of the Board and its officers. The Convener also led Scotland’s delivery of the European Parliamentary Elections in 2009 and 2014 as Regional Returning Officer, the AV Referendum in 2011 and the EU Referendum in 2016 as Regional Counting Officer (RCO) for both events.

Governments, politicians, the Electoral Commission, Returning Officers and Electoral Registration Officers now recognise the EMB as the expert body delivering electoral events while leading, supporting and advising ROs and EROs,

Scottish Government Consultation on Electoral Reform

On 17 December 2017 the Scottish Government launched a consultation on Electoral Reform, following the Scottish Parliament gaining new powers over the conduct of Scottish Parliamentary elections and electoral registration, alongside its existing devolved responsibility for local government elections.

The EMB welcomes the opportunity to respond to the consultation. The answers below represent the views of the EMB and are the product of the Board’s own consideration of the topics and its engagement with ROs and EROs formally and informally since the launch of the consultation.

The Board would be happy to meet with Scottish Government officials or Ministers to discuss any of the points in this response more fully and to engage in broader discussions around the practical delivery of electoral activity in Scotland.

In responding to the questions posed in the consultation the EMB primarily addresses practical issues with respect to the delivery of elections, rather than issues of policy which would be outwith its remit. The Board does make some comment on the potential practical implications of the policy decisions being considered in the consultation.

QUESTION 1: Do you think the term length for the Scottish Parliament and local government should be:

- 4 years?
- 5 years?
- Other length (please specify)?

The term length for both councillors and Members of the Scottish Parliament is a matter of policy. As such the EMB is not expressing a specific position. However, the EMB is clear that the term lengths determined should be such as to avoid elections to the UK Parliament, the Scottish Parliament or local councils occurring on the same day. Formal or informal “combination” of polls should be avoided.

QUESTION 2: Do you have any other comments or suggestions on term lengths?

As noted above, the EMB would support the continuation of the practice of “decoupling” electoral events. Such clashes should be prevented. As recommended in the Gould report which commented on the issues that arose in the 2007 elections, it is in the clear interest of the voter to avoid situations where they are required to vote in different contests on the same day.

While holding elections on the same day may increase overall turnout, Gould commented that this arrangement can “dilute” the importance of the local elections and of local issues with debate dominated by national questions. There is also a very real danger of voter confusion and the potential for augmented numbers of rejected ballots given the different voting systems that are used in the different elections with the different methods of completing the ballot paper.

With respect to local councils, election dates also need to reflect the realities of political discussions and allow for the formation of administrations and their subsequent setting of budgets.

The sequencing of electoral events and how they align with boundary reviews also needs to be considered as revised boundaries can introduce additional planning and work around subsequent elections.

QUESTION 3: Do you agree that the Electoral Management Board and the Board’s Convener should be given the same functions in relation to Scottish Parliament elections as they already have for local government elections?

There is a strong argument that the EMB and its Convener should be given the same functions and powers in relation to Scottish Parliament elections as they already have for local government elections. This has been the formal and informal position of the EMB in recent years and was put forward for example in the Board’s most recent [Annual Report](#) for 2016/17 where it was commented that, such a development would in many ways only recognise what is the current position. *“An expanded statutory role for the EMB would recognise its work across all elections, not just those for local authorities.”* The EMB already provides a degree of informal guidance, advice, and recommendations for all electoral events to support best practice and consistency. The broadening of powers to cover all elections would reflect what is already the practical experience in many cases.

The EMB's role in the 2011 Act is restricted formally to the oversight of local government elections in Scotland. However, this only reflected the legislative position at that time in that the legislation around Scottish Parliament elections was still reserved. With the responsibility for Scottish Parliament elections now with the Scottish Parliament it would be consistent with the intention of the original legislation for the responsibilities of the EMB and the powers of its Convener to be extended to cover those "Holyrood" elections in addition to local government polls.

The performance of the EMB has been widely praised over recent years. The Board has delivered consistency in the conduct of electoral events in Scotland with a very clear concern to maintain the priority of the interests of the voter. It has also successfully promoted appropriate contingency planning and best practice among ROs and EROs.

ROs and EROs increasingly look to the EMB for guidance and recommendations on the conduct of their functions in all elections. In Scotland the EMB is seen as the primary representative body of ROs, EROs and of their professional staff. The Board engages regularly with and advises Ministers, Governments, political parties and other stakeholders such as academics and groups representing disabled voters.

For electoral events for which the EMB does not currently have a statutory responsibility, it has still provided guidance and recommendations to achieve consistency and ensure adequate contingency. For example, in support of the [UK Parliamentary General Elections in both 2015](#) and 2017 and the Scottish Parliament elections in 2016 the EMB made recommendations to ROs and EROs for example to achieve consistent national dates for the publication of Notices, the issue of poll cards and postal votes and to clarify issues around the Official Mark and Ballot Paper numbering protocols. These recommendations were adhered to by all ROs and EROs.

An extension of the EMB's remit to address all elections would therefore only reflect in legislation what is already often the practical experience.

It is also the view of the Electoral Commission that the remit of the EMB should be expanded. In their report on the administration of the Scottish council elections held on 4 May 2017 the Electoral Commission state:

"It is now ten years since the Commission recommended the creation of an EMB with statutory powers to co-ordinate and direct other ROs at elections in Scotland and it is six years since the Scottish Government legislated to set the EMB in statute in respect of local government elections. Despite the clear benefits which the EMB has demonstrated in respect of delivering well-run electoral events for voters in Scotland, the Scottish and UK Governments have yet to legislate to set the EMB in statute for Scottish Parliament and UK Parliament elections respectively."

It has been the clear position of the Electoral Commission for several years that the remit of the EMB should be developed.

QUESTION 4: Do you have any other views on the future role of the Electoral Management Board?

In terms of the delivery of sound electoral events in which the voter can have full confidence it is important that the governance structures are robust with clear distinction between the role of the EMB, Governments and the Electoral Commission. Governments legislate and set the policy direction. The EMB and the ROs and EROs deliver the election according to the rules and the Electoral Commission regulates and reports objectively. Those delivering the electoral event, the EMB and those it oversees, always need to be separate from and independent of political control.

With respect to future roles and functions of the EMB, there may be some lessons from the experience of the Scottish Independence Referendum in 2014. At that event the CCO was responsible for the production of guidance as for the actual delivery of the event. The production and issue of guidance for ROs and EROs is currently a function of the Electoral Commission. However, the development and production of such guidance would be consistent with the fundamental role and purpose of the EMB in the promotion of consistency and best practice. The EMB would obviously need appropriate resourcing to allow it to adopt this function.

As the EMB continues its development there may be a need in future to address its legal status and overall resourcing. The current legal status has the Board as a group of ROs and EROs advising a Convener who individually holds powers of direction. This has been adequate. The creation of a Board with a formal legal personality might simplify and clarify the financing of operations, but would be a significant change in status for the members.

Appropriate resourcing also needs to be provided to allow the Board to undertake its full suite of responsibilities. If these responsibilities were expanded then additional resource would be needed. The Electoral Commission raised similar thoughts in their report on the administration of the 4 May 2017 Scottish council elections:

“The legal status and funding of the EMB also needs to be reviewed to allow it to undertake the management roles it was initially envisaged it would undertake, including overseeing the procurement and delivery of the e-counting project for council elections.”

The Board does not operate as a Chief Returning Officer but works with individual ROs and EROs who maintain their own authority and responsibilities according to the standard governance arrangements for UK elections. The delivery of elections through multiple local ROs and EROs is a mode of operation that is accepted and successful with many advantages. Any move towards a de facto Chief Returning Officer would have to be carefully assessed and considered.

QUESTION 5: Should the Returning Officer appointment for Scottish Parliament elections continue to be on an appointment on a personal basis, independent from Scottish Government and local authority control?

It is a central element of the overall integrity of the electoral process that the Returning Officer, who is responsible for running the election, is independent from government, either national or local. Those running the election cannot be accountable to the politicians who are elected, due to the scope for potential and perceived conflicts of interest.

It is a basic assumption that the RO must be independent of any actual or implied political control. As such it is not appropriate for the RO to be formally responsible to politicians. For the delivery of sound electoral events in which the voters will have full confidence the official with responsibility for their delivery cannot be seen to answer to politicians. The current arrangement in which the RO is free from political control and answerable only to the courts is appropriate and should continue.

The EMB submitted extensive detailed evidence orally and in written form to the Scottish Parliament's Local Government and Communities Committee to support and inform their consideration in late 2016 of Payments to Returning Officers in Scotland. The comments here and at Questions 6 and 7 repeat the points made in that evidence. Incidentally, the report from that Committee published on 24 January 2017 did note in paragraph 62 that "*The Committee agrees that the role should remain independent and outwith political control in order to maintain confidence in those carrying out the role.*"

The RO is the person with the sole legal responsibility for running an election. Their role is to ensure that the election is administered effectively to deliver a result in which the voter can have full confidence. This involves a complex range of tasks, completed to a strict timetable, within a limited budget to facilitate the fundamental democratic function in civic society – that of elections.

As the official charged with conducting an election in a particular area and making a "return" of the result the RO has a central role in the democratic process. They are in oversight of the delivery of an election in their voting area. Their role is to ensure that the election is administered effectively and that, as a result, the experience of voters and those standing for election is positive. The election must be delivered in accordance with the law but also in such a way that the interests of the voter are held central to all planning and operations. Their ultimate objective is that there will be confidence in the result. This confidence is predicated on promoting confidence from all stakeholders in all stages of the process from nominations through polling and postal voting to the count.

Both in law and in principle the duties of the RO must be separate from any of an individual's duties as an officer of local or central government. This follows from Section 27(1) of the RPA 1983, which makes the office of RO totally distinct from the office by virtue of which an individual has become RO. However, it is the principle not the law that is to be emphasised.

A local government officer, even a Chief Executive, is responsible to their Council, a set of elected politicians. The individual delivering elections must be independent of political control. Hence ROs are directly accountable only to the courts as an independent statutory office holder. These cannot be duties rolled into the Job Description of the Chief Executive or other local government officer as this would place the administration of elections under some degree of unwarranted political control.

QUESTION 6: Should the role of the Returning Officer become part of the job description of local authority Chief Executives? (This is not currently the case and would require renegotiation of terms and conditions.)

As stated above in answer to Question 5, a local government officer, even a Chief Executive, is responsible to their Council, a set of elected politicians.

The principle of the independence of the RO demands that the role is separate from the Chief Executive (or other local government officer who may be appointed as RO). For free and fair electoral events, the RO cannot be accountable for electoral duties to those whose election s/he administers. There is currently a legal separation of duties. The RO is not responsible to their council but is directly accountable to the courts as an independent statutory office holder. This separation follows from Section 27(1) of the Representation of the People Act (RPA) 1983, which has the effect of making the office of Returning Officer totally distinct from the office by virtue of which an individual has become Returning Officer.

In making the RO duties separate from duties of a local government officer the law is only making explicit what is a natural consequence of the need to ensure that elections are and are seen to be free of political control. Since the RO is the official charged with conducting an election in a particular area it is not appropriate that they are responsible to those who are elected. As such the RO role cannot be part of the duties of a council post. Including RO duties within the job description of a council employee would make the RO ultimately responsible to those who are themselves elected. This would remove the autonomy and independence of the RO and put in question the integrity of the electoral process. It is a fundamental principle that a robust and sound electoral process must be administered out with the control of politicians and those who are themselves elected.

Every council must appoint an officer of the council to be the RO for any elections of councillors to the council. This gives the RO easier access to the resources, staff and infrastructure of the council to be used in the delivery of the election. However, these resources are not made available as a consequence of the RO being a Chief Executive of the council. Councils must in any case make available to the RO the necessary resources to enable the RO to discharge their functions.

Furthermore, the Returning Officer is not bound by a Council's normal procedures in terms of conducting the election or subject to direction or instruction from members of the Council in respect of the discharge of the responsibilities falling to the statutory office. This reflects a position enshrined in statute that an independent officer is responsible for the proper conduct of the election "without fear or favour". It would be a major revision to policy and governance structure for this arrangement to be changed.

A set of legal consequences would also flow from a move to make the RO role part of the Chief Executive function. Quite apart from the loss of political independence this would see elections delivered by staff formally employed by the Council. Now staff are employed by the Returning Officer. Were polling and count staff to be employed by the local authority they would be subject to all the usual employment processes and policies from which council staff benefit. This would include overtime restrictions, the application of the working time directive, the need for extensive recruitment processes and a consideration of the pension position. It could also have significant cost implications.

The EMB would be happy to discuss these consequences with government, but it would make the delivery of the election a more difficult proposition practically and legally.

QUESTION 7: Do you have any other comments or suggestions about who should have the role of Returning Officer or how Returning Officers should be paid?

The principle to be maintained is that the RO should be independent of political control or influence, either real or perceived. This means that while acting as RO the individual cannot be accountable to elected officials, only to the courts. The RO duties must be legally separate role from the duties of a local government officer to preserve and demonstrate the integrity of the electoral process.

The duties of the RO are complex, time-critical and fundamental to the delivery of sound elections. The RO often must act in a quasi-judicial capacity determining for example key important questions around the validity of nominations or whether to reject a particular ballot paper. These skills are broad, complex and demand significant experience and awareness of the process.

The appropriate level of remuneration is a matter for determination separately. However, it would be wholly inconsistent with practice elsewhere in public life were duties of the scale, degree of responsibility and importance of ROs to be left without remuneration. The role is important in civic life and is undertaken at the personal risk of the RO who is answerable to the courts for the delivery of the tasks. The scale of the remuneration for these tasks should be determined through an evaluation of the duties, as with other jobs.

Currently the fee payable to the RO for their services in the delivery of Parliamentary elections is fixed by Parliament as an element of determining the funds allocated for running elections and is proportional to the size of the electorate in the constituency adjusted by various relevant factors.

Referendums are administered by the RO in the role as "Counting Officer", but otherwise the issues and approach are identical. For example, for the 2014 Scottish Independence Referendum the fees to Counting Officers were determined by Scottish Government.

In local government elections any fee is determined by the individual councils. A rate was advised nationally by COSLA in 2008 but it has not been revised since.

QUESTION 8: Do you agree that candidates' addresses should not be required to appear on ballot papers for local government elections?

This is a policy matter and for governments to determine and promote in the relevant election rules. However, as elsewhere in this response, the EMB would make some comments with respect to the practicalities.

The historic rationale for the inclusion of the candidate address is that it provides a demonstration of the candidate's local connection – although there are other qualifications such as working in the local authority area. There are also historical cases where the inclusion of the address allows the voter to distinguish between candidates who have identical names. In the case of independent candidates with identical names the address maybe the only distinguishing feature.

There is an argument that if a candidate is standing for public office as a representative of a community then details of their name and address properly enter the public domain so that they can be effective representatives. However, there also needs to be a recognition of the concerns around the security of candidates.

A position consistent with the UK Parliamentary approach would be to allow the candidate the choice of whether or not to include the home address with the alternative of stating their qualification for standing (e.g. "address in the local authority area" or "employed in the local authority area").

The EMB also notes the UK Government's announcement on 7 February 2018 that from May 2019 they intend to remove the requirement for ballot papers to include candidate addresses for local elections in England.

QUESTION 9: Do you have any other comments to make on this issue?

There needs to be a recognition that it is not only the ballot paper that contains the candidate's home address. Other election documentation such as various statutory notices also contain full details of the candidate. If addresses are to be removed from ballot papers they would also need to be removed from other documentation that currently includes them, for example the Notice of Poll or the Notice of Appointment of Election Agents.

For the EMB the issue should properly be filtered through a consideration of what is in the interest of the voter and there are arguments that the voter might benefit from an awareness of the candidates address in helping them to identify and distinguish the candidate. On the other hand, the removal of the need for the home address might promote participation from additional candidates which itself might be in the interest of voter.

QUESTION 10: The Scottish Government would welcome views on this issue.

- Do you agree that, in order to counteract the list order effect, a change should be made to the way in which candidates are listed on election ballot papers?
- If so, what form of new system would you favour: rotation; randomisation; alphabetical-reverse alphabetical? Any other?

This is a policy matter to be determined by Parliament. While expressing a preference with respect to the design of the ballot paper, EMB has a responsibility to raise practical concerns and to consider the impact of changes on the voter.

It is often observed that the ballot paper is the most fundamental document in the electoral process. As the most basic voter-facing document it is imperative that any changes are thoroughly considered and must be the result of extensive testing with voters.

The Electoral Commission document "[Making Your Mark Good practice for designing voter materials: guidance for electoral administrators](#)" contains detailed guidance on the design of voter facing materials. The principles it lays out for the design of ballot papers derive from its function "to enable the voter to indicate their chosen candidate or party at an election".

According to *Making Your Mark*, the ballot paper needs to be designed in a way that makes it easy for the voter to:

- understand what the ballot paper is for;
- find their chosen candidate or party;
- mark their choice in such a way that their vote is valid and reflects their intention; and
- allows the voter's choice to be clearly identified when the votes are counted.

A change away from the simple alphabetical list ordering of candidates by surname would be a fundamental change in the design of the paper and would need to be assessed against these design principles and then extensively tested.

The EMB has previously given views to the Scottish Government during previous discussions of this proposal. The position stated by the EMB in March 2015 remains unchanged in many ways and is reiterated here.

The current system of alphabetical listing is an accepted and traditional method of listing names on a ballot paper, the rationale of which is simple and generally well understood by voters.

Voters are electing individuals to represent them. Votes in local government elections in Scotland are not for parties or groups but for representative individuals and it is for the individual candidate to campaign for the electors' support. Effective and clear campaigning by candidates should be the first step in addressing any bias that is perceived or demonstrated.

A ranking bias may be perceived as claimed in the consultation material. It is to be noted that this is only an issue in these elections where a party has nominated more than one candidate. It is not an issue for all candidates, rather it is only an issue for those candidates on the same ballot paper standing for the same party.

There would be a range of significant administrative challenges associated with a move away from the current system towards some form of randomisation. These would include:

- **Printing** – randomisation would limit print suppliers to those with complex digital facilities able to produce sets of ballot papers of different ordering.
- **Proof-reading** – the ballot paper is the most fundamental document in the electoral process. Great care given to checking that it is accurate. Randomising the ordering of candidates would add a large volume of work to the proof checking, especially if an “enhanced” randomisation was applied where every paper was different. Proof checking already involves multiple papers for each contest when ballot books, tendered papers, postal papers and large print papers are included.
- **Supporting voters with disabilities** – large print and handheld ballot papers are produced to help voters with poor eyesight. Tactile voting devices are created to allow blind voters to cast their own vote. If randomisation was to be introduced to address bias among all voters, then it would have to be applied to the papers used by all voters including those with disabilities. Hence there would need to be a set of tactile devices, large print papers etc for each version of the paper. Excluding these voters from the randomised papers would leave them subject to the perceived bias. Further work would be needed with disabled voters to ensure that the randomisation did not disadvantage them.
- **Complexity of voting materials and notices** – it is not just the ballot paper that is in alphabetical order. The Notice of Poll is also in that order as are the tendered ballot papers. The situation could exist where two postal voters in the same household might well receive two different ballot papers, an opportunity for confusion and doubt about the process.
- **The count** – a randomised paper would be an extreme challenge at a manual count, such that its adoption would effectively mandate an electronic count. For full elections this is not an issue as there is always an electronic count. However, for by-elections many authorities currently utilise a manual count. This would not be possible with a random paper. To suspend randomisation for by-elections would again erode consistency although it is rare in byelections for there to be multiple candidates from the same party and it is only in such cases that there is an order bias, so this may not be an issue.
- **Voter confusion** - Consistency is always an advantage to aid understanding and limit potential confusion. Voters are used to a consistent approach to the ordering of candidates on the paper, with a simple and defensible rationale. Any change would have to be carefully researched.

Whatever ballot paper design is chosen, that option would need to be thoroughly trialled. More research may be required on the effect that alphabetical ordering has had, and non-alphabetical ordering would have, on voting behaviour. Novel ballot paper designs should not be introduced without well-planned and thorough testing.

QUESTION 11: Do you have any other comments to make on this issue?

The Consultation Paper notes that “... *many candidates feel that their chances of being elected are adversely affected by the alphabetical ordering system*”, however, the design of the ballot paper needs to be concerned primarily with the needs of the voter not the candidate. These needs are expressed in the principles detailed in the Electoral Commission material “[Making Your Mark - Good practice for designing voter materials.](#)”

The ballot paper is the most basic document in the election. Any modifications to it must only follow extensive testing and engagement with the electorate. Testing is essential as there are risks to the introduction of novel features on the ballot paper. The 2007 Scottish Parliament Elections were the subject of a number of problems in delivery some of which might be seem as a consequence of changes to the ballot paper, as noted in the Gould report.

QUESTION 12: Voting Machines

- Would you be happy to use an electronic voting machine in a polling place instead of a traditional ballot paper?
- Would you like voting to be possible on more than one day?
- Would you like to be able to vote at any polling place in Scotland?
- Do you have any other comments?

These questions are phrased as addressing a voter rather than the administrators, ROs and EROS that are represented by the EMB. As such they are not directly for the EMB to answer. However, they do raise some very real practical issues on which is it appropriate for the EMB to comment.

As has been emphasised several times in this response, the EMB's ultimate concern is for the interests of the voter. Its legal remit is to promote best practice in electoral administration. A fundamental aim of the EMB is the delivery of sound elections that produce results in which there will be full confidence.

Proposals for voting machines, voting periods and flexibility around the polling station chosen need to be considered against a matrix of criteria representing the basic principles of a sound electoral event.

- **Secrecy of the ballot** – if the risk of coercion is to be limited a vote must be cast in secret so that there is no opportunity for reward or sanction.
- **Transparency and traceability** - Elections also need to be transparent to promote confidence and to allow a full audit trail to allow results to be defended and open to challenge.
- **Perception of fraud** – a transparent system with audit trails and traceability promotes confidence in the system. Confidence can be fragile and with rumours and conspiracy theories can spread quickly in the age of social media as was experienced following the Scottish Independence Referendum which generated a large volume of accusations of electoral fraud and doubt about the system. Some of these unfounded accusations are still being dealt with.

It is also appropriate for the EMB to comment on some of the practical issues that would need to be tackled for such developments to be applied.

- **Use of voting machines** – there would be costs associated with their introduction and deployment and resources would need to be made available to cover these costs. Some Polling Places may need to be changed if they were unsuitable for accommodating the machines either in terms of space or IT infrastructure. Staff would need to be trained to maintain and operate the system and would need to support voters unsure of the technology.
- **Accessibility** – there would be a need to retain paper ballots for postal votes and for the use of those unable or unwilling to use the machine
- **Early voting period** – there would be an impact on the campaigning strategy of parties as they would no longer be targeting a single day. In some ways we already have a de facto early voting period due to importance of postal voting to the results.
- **The freedom to vote at any polling place (registration)** - this would require a fundamental revision to the way in which the electoral register is managed and used in polling. With a voter restricted to a single polling station it is easy to ensure that each voter only votes once, the mark on the register preventing another paper from being issued. With “roaming” voting a system would need to be introduced to ensure that each voter only voted once. This might involve for example a “live” eRegister accessible by internet from any polling place in the country, but that would encompass a number of associated issues.
- **The freedom to vote at any polling place (ballot papers)** – ballot papers in any polling place are currently specific to the ward or constituency in which the polling place is located. If polling was made possible at polling places outwith the ward/constituency then arrangements would need to be made the appropriate ballot paper available. One solution would be the use of eVoting machines, able to display multiple papers.

QUESTION 13: Internet and Mobile Phone Voting

- If internet or mobile phone voting was available, would you choose to use that rather than vote at a polling place or by post?
- If internet or mobile phone voting was available, would you be more likely to vote?
- Would you like voting to be possible on more than one day?
- Do you have any other comments?

These questions are phrased as addressing a voter directly as to their preference as voters. It is not appropriate for the EMB to answer these questions from that perspective. However, there are practical issues related to the topics raised on which the EMB wish to comment.

The questions raise issues focussed on “turnout” specifically asking whether alternative methods of voting (early voting periods, remote voting via the internet etc) would promote improved turnout. This implies an assumption that voting method is a key driver of turnout. However, it has been the experience of recent electoral events that turnout is supported when the issue of the election engages the electorate. For example, at the Scottish Independence Referendum in 2014 the turnout was a huge, 84.6%. This was an electoral event delivered under traditional arrangements using paper ballots. The issue drove the turnout not the voting method.

Other parts of the UK have trialled different methods of voting with pilots of early voting, internet and phone voting in 2003 and 2007 and with all postal pilots at other times. The statistics do not seem to support the idea that these different methods improved turnout. In any event the EMB would hope that the lessons of these previous pilots are considered in any consideration of new methods for Scottish elections.

For future investigation, one option might be to consider internet voting as an alternate method of absent voting with the same rules and restrictions as postal voting including a separate register.

There may be other issues at play in addition to the promotion of turnout. However, in all of this the EMB would seek to highlight the fundamental importance of the integrity of the electoral process. It is a basic principle that the secrecy of the ballot must be upheld. Voting in secret avoids the risk of coercion so that the voter cannot be threatened, punished or rewarded for their vote. Preserving and protecting the secrecy of the vote is a challenge for all methods of “remote” voting outside a polling booth, be it postal voting or voting by mobile phone or the internet. If the method is changed adequate consideration must be given to measures to address the risk of the breach of the secrecy of the vote so that the voter is always protected.

In addition to the actual practical protection of integrity, the *perception* of integrity is a major concern that has become increasingly important in the age of social media. Following the Scottish Independence Referendum in 2014 there was an element of the electorate who were convinced that there had been various levels of electoral fraud in the referendum process. The EMB, EROs and ROs around the country had to answer accusations of electoral fraud often by narrating the individual through the electoral process and the various checks and balances that are in place to preserve security and integrity. Often there was a perception of fraud driven by rumours and speculation on social media. Internet voting in the current environment of accusations of the “hacking” of elections might generate more rumours of fraud. Voters might not trust the integrity of the system which could undermine overall confidence in the election.

QUESTION 14: Do you think that we should move to a rolling programme of reviews of local government electoral arrangements?

This again is a matter of policy for the decision of Parliament. In terms of the associated practical issues, the EMB would again seek to ensure that the interests of the voter are always given priority. Reviews of electoral arrangements are needed to ensure that they reflect the current local demographics and geography, with population shifts due to housing development etc potentially impacting on the parity of representation.

Reviews of electoral arrangements have practical consequences for electoral administrators and councils. Councils need to react to changes in local government electoral boundaries. They have a responsibility to divide each ward into polling districts and identify a polling place for each district. When boundaries change this can mean a revision to polling districts and places. This is a substantial piece of work for ERO and Council staff with associated public consultation. The practical consequences of boundary reviews need to be considered. Consideration also needs to be given to the sequencing of reviews with scheduled elections so as not to impact on their delivery.

Rolling reviews might allow more time and resource to focus on areas where there has been extensive change but there would also be potential challenges.

QUESTION 15: Independence of boundary reviews

- Should Scottish Ministers be able to change the recommendations of the Local Government Boundary Commission for Scotland on Scottish Parliament constituencies and council wards?
- Should the Scottish Parliament be able to challenge the recommendations of the Boundary Commission on Scottish Parliament constituencies and council wards?
- Should the recommendations of the Commission be implemented without change?
- Please comment on your answer.

While this question raises policy matters, the EMB would identify several practical and fundamental issues that should be included in consideration of this matter.

The determination of constituency / ward boundaries is a fundamental basic element of the system of representative democracy. Boundaries should be established such as to allow voters equal representation by their elected members. This idea of parity is a fundamental basis of electoral systems.

Such a fundamental as the determination of boundaries should be based on the same principles as the other elements of the delivery of elections with transparency of decision making, an audit trail and the independence of the process from political control.

In the same way that the RO is properly independent from political control and accountable only to the courts it would seem to be consistent for those determining boundaries to be independent, so that changes are not made by politicians but by a thoroughly independent agent. Where there is any degree of political control of boundaries there is a risk of the appearance of political entrenchment where boundaries are designed to maintain the position of the incumbents.

QUESTION 16: Should the Local Government Boundary Commission for Scotland be allowed the flexibility to recommend wards which have between 2 and 5 councillors, instead of 3 or 4 councillors as at present?

This is a policy issue for the determination of Parliament. The EMB would note that the decision on the appropriate number of councillors per ward needs to be considered in the light of what is in the best interest of the voter in providing them with the optimal degree of representation on the council.

There are issues here revolving around the nature and design of the electoral system. Larger wards with a greater number of electors and members allow for a greater degree of proportionality.

However, decisions about the determination of boundaries need also to reflect the natural neighbourhoods and local communities that exist physically.

QUESTION 17: Do you agree that the franchise should be extended to include everyone legally resident in Scotland?

This is a policy issue and outwith the remit of the EMB. It is understood that the Electoral Registration Committee of the Scottish Assessors Association (SAA) representing the country's EROs will make address the practicalities of this proposal in their own response to the consultation. A key issue here is expected to be the definition of the term "legally resident".

QUESTION 18: Do you have any views on how long should someone be resident in Scotland before they become eligible to vote?

This is a policy issue and outwith the remit of the EMB. It is understood that the Electoral Registration Committee of the Scottish Assessors Association (SAA) representing the country's EROs will make address the consequences of different approaches in their own response to the consultation.

QUESTION 19: Do you have any other comments to make on this issue?

As noted this is a matter of policy outwith the remit of the EMB. Practical issues will be dealt with by the Electoral Registration Committee of the Scottish Assessors Association (SAA) in their own response to the consultation.

QUESTION 20: Do you think that we should make it easier for individuals who may be at risk from any form of abuse to register anonymously, whilst maintaining the integrity of the electoral register?

As noted this is a matter of policy outwith the remit of the EMB. Practical issues will be dealt with by the Electoral Registration Committee of the Scottish Assessors Association (SAA) in their own response to the consultation.

The EMB does however recognise that for survivors of domestic abuse, anonymity may be essential to their protection and that appropriate measures may be needed in such circumstances to allow the safe operation of the franchise.

QUESTION 21: Should a voter be allowed to register in more than one local authority area?

This again is a policy issue to be determined by Parliament. Practical issues will be dealt with by the Electoral Registration Committee of the Scottish Assessors Association (SAA) in their own response to the consultation.

QUESTION 22: Do you agree that a voter should only be allowed vote once in local government elections in Scotland?

This again is a policy issue to be determined by parliament. Practical issues will be dealt with by the Electoral Registration Committee of the Scottish Assessors Association (SAA) in their own response to the consultation.

QUESTION 23: What other action could the Scottish Government take to widen access to and remove barriers to voting and elected office?

The promotion of “Accessibility” in elections is one of the key principles that shapes the work of the EMB. The EMB is committed to ensuring that any barriers to participation in elections are addressed and removed wherever possible. There should be no barriers to any voter or candidate taking part in the electoral process.

With respect to barriers to voting the EMB would highlight the November 2017 report of the Electoral Commission “[Elections for Everyone](#)”. The EMB agrees with the points made in that report and the recommendations proposed for Governments, political parties, electoral administrators, and carers.

With respect to action by Government that report proposes:

- changes to election forms so they can be easily understood;
- a consideration of different ways that people with disabilities can vote so they have greater flexibility and choice; and
- changing the law so that people with disabilities have more choice about who they can take to the polling station with them.

Some of these proposals if legislated for might require additional resource from electoral administrators and ERO teams in the preparation for and delivery of elections. Such additional elements would need to be resourced by government to ensure that the costs were not falling wholly on the council.

In a related area, the EMB also notes that on 24 October 2017 the Scottish Government published Scotland's first [British Sign Language \(BSL\) National Plan](#), as required by the BSL (Scotland) Act 2015. It includes 70 actions to be taken by 2020 progress towards a goal of making Scotland “the best place in the world for BSL users to live, work and visit”. The plan commits Scottish Ministers to “work with election organisations, political parties and BSL users to ensure that the needs of BSL users are being met, enabling them to participate fully in politics.” The EMB will seek to work with Scottish Government to implement appropriate measures, but again these will need to be appropriately resourced.

The EMB has recently been engaged with the Scottish Parliament Cross Party Working Group on Visual Impairment and their discussion of the experience of voting among those with a visual impairment. Conversations highlighted a tension that many such voters were aware of in that measures to support visually impaired voters in voting often mean that the secrecy of the ballot is compromised to some extent, for example where a companion completes the ballot paper on behalf of the voter. Such compromise is accepted and also occurs in proxy voting, but with respect to a visually impaired voter there is a sense among some that their independence as a voter is removed and they would prefer to use technologies that would allow them to voter independently. The EMB would support such investigation of such technologies that could range from the current tactile voting device to more complex ICT solutions.

Throughout its planning to support accessibility the EMB would also propose that measures need to be proportionate and realistic. For example, it would not be practical to locate a BSL interpreter in every polling place but other measures may be possible which would address some of the barriers that BSL users might experience.

With respect to action to address barriers to elected office again this is a policy matter outwith the remit of the EMB. However, the members of the EMB are aware of the recent positive experience of the “Access to Elected Office Fund Scotland” that was piloted from August 2016-May 2017. That pilot needs to be evaluated and the findings used to inform future policy developments aimed at addressing barriers to standing for elected office.

It is also noted that often independent candidates in general are disadvantaged as they do not have the support and infrastructure of a party.

QUESTION 24: As well as the above arrangements, is there anything else that could be done to increase the accessibility of elections?

The EMB notes that there may be costs associated with measures to increase the accessibility of elections. Such measures need to be adequately resourced.

Supporting accessibility to elections is a responsibility of several stakeholders. These include political parties, the Electoral Commission, ROs, EROs and governments. All must be involved in a consistent strategy to address such barriers. Responsibility must be shared since many of the key barriers while implemented by ROs and EROs do not lie within their direct control.

Discussions of accessibility are not solely about the barriers of physical disability. There are many other factors that can cause voters and candidates to be excluded and these all need to be considered.

QUESTION 25: How can the Scottish Government best support gender balance in those elected as MSPs or local councillors?

This issue is not within the remit of the EMB. It is for the electors to determine which of a set of candidates are elected. The composition of that list of candidates on the ballot paper is a result of the nomination process with independents free to stand.

Political Parties are responsible for selecting candidates that they will authorise to stand under their description and emblem. It is for political parties to select those candidates on whatever basis they choose.